

Delhi High Court

R K Jain vs Union Of India & Anr on 8 December, 2011

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 29.11.2011

Judgment delivered on: 08.12.2011

W.P.(C) 6756/2010

**R K JAIN Petitioner Through: Mr. Pranav Sachdeva,
Advocate.**

versus

**UNION OF INDIA & ANR Respondents Through: Ms.
Geeta Sharma, Ms. Mithu Jain & Ms. Manisha Dhir,
Advocates.**

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

**JUDGMENT
VIPIN SANGHI, J.**

1. The petitioner assails the order dated 22.04.2010 passed by the Central Information Commissioner (CIC) upholding the order of the First Appellate Authority, and rejecting the petitioners application under the Right to Information Act, 2005 (RTI Act, for short) by relying upon Section 8(1)(j) of the RTI Act.

2. It is the petitioner's case that upon complaints of corruption against Ms. Jyoti Balasundaram, Member, CESTAT, the President of the CESTAT - a former Chief Justice of a High Court, made some adverse entries in the Annual Confidential Report (ACR) of Ms. Jyoti Balasundaram for the year 2000-01. The petitioner also alleges that

subsequently, Ministry of Finance, Department of Revenue opened a file with the subject "Follow-up action on the integrity in the ACR for the year 2000-01 in respect of Ms. Jyoti Balasundaram, Member, (Tech), CESTAT". According to the petitioner, proper action was not taken in the matter and the file was closed in favour of Ms. Jyoti Balasundaram.

3. The petitioner filed an application under the RTI Act on 07.10.2009 seeking inspection and copies of the note-sheets and correspondence pages of PF File NO. 27/3/2002-AD.IC relating to Ms. Jyoti Balasundaram.

4. On 15.10.2009, the CPIO of CESTAT informed the petitioner that the file contained analysis of the Annual Confidential Report of Ms. Jyoti Balasundaram. This was claimed to be exempted under Section 8(1)(j) of the RTI Act. The First Appellate Authority also rejected the petitioner's appeal on the same ground on 18.12.2009. By the impugned order dated 22.04.2010 the second appeal of the petitioner has also been rejected by the CIC by holding that the view of the Commission has been that ACR grades should be disclosed only to the person to whom they relate, except in exceptional circumstances. It was also held that examination of the file comments made by the reporting and the reviewing officer in the ACRs stand on the same footing as the ACR itself. On this ground it was held that the said information cannot be disclosed to a third party. It was further observed that disclosure of such file, even to the public servant to whom the ACRs may relate, is itself open to debate.

5. The submission of the petitioner before this Court is that seeking information about the follow up action in a separate file about integrity remark in the ACR of the Member of the Tribunal is distinct and different from asking for the copy of the ACR itself. It is submitted that disclosure of the information dealt with in a separate file for follow up

action are not exempted under Section 8(1)(j), since it is not a disclosure of the personal information, viz. the ACR, but disclosure of information which puts in question the integrity of a Member of a Tribunal and, therefore, it concerns public interest.

6. On 23.03.2011 after hearing the parties, the following order came to be passed by the Court:

"1. There are two issues that arise for consideration in this petition. One is whether the notes in the file opened by the Respondent consequent upon certain notings in the Annual Confidential Record („ACR“) of one of the members of CESTAT can be disclosed to the Petitioner? The second issue is whether the information can be withheld in view of Section 8(1)(j) of the Right to Information Act, 2005 („RTI Act“) and whether for that purpose the procedure under Section 11 of the RTI Act is required to be followed?

2. In the first instance, in order to enable this Court to appreciate the contention of learned counsel for the Petitioner that the information that is sought is that contained in the separate file and not the ACR itself, the Respondent is directed to produce the relevant records for perusal by this Court on the next date.

3. List on 8th July, 2011".

7. The respondents produced the original record in terms of the order dated 23.03.2011 before me and I have perused the same.

8. Upon a perusal of the file produced by the respondent, to me it appears that the said follow up action file cannot be said not to be connected with, or related to the Annual Confidential Report file of Ms. Jyoti Balasundaram. The said file contains correspondence in relation to the remark recorded by the President of the CESTAT in relation to Ms. Jyoti Balasundaram, and also contains the reasons why the said remarks have eventually been dropped. The recordings made in the said file constitute an integral part of the ACR record of the officer in

question, viz. Ms. Jyoti Balasundaram. I, therefore, reject the petitioner's submission that the said file contains information which is different and distinct from the Annual Confidential Report of Ms. Jyoti Balasundaram.

9. It has been held in *Arvind Kejriwal Vs CPIO*, AIR 2010 Delhi 216 as follows:

"22. Turning to the case on hand, the documents of which copies are sought are in the personal files of officers working at the levels of Deputy Secretary, Joint Secretary, Director, Additional Secretary and Secretary in the Government of India. Appointments to these posts are made on a comparative assessment of the relative merits of various officers by a departmental promotion committee or a selection committee, as the case may be. The evaluation of the past performance of these officers is contained in the ACRs. On the basis of the comparative assessment a grading is given. Such information cannot but be viewed as personal to such officers. Vis-à-vis a person who is not an employee of the Government of India and is seeking such information as a member of the public, such information has to be viewed as constituting "third party information". This can be contrasted with a situation where a government employee is seeking information concerning his own grading, ACR etc. That obviously does not involve "third party" information.

23. What is, however, important to note is that it is not as if such information is totally exempt from disclosure. When an application is made seeking such information, notice would be issued by the CIC or the CPIOs or the State Commission, as the case may be, to such "third party" and after hearing such third party, a decision will be taken by the CIC or the CPIOs or the State Commission whether or not to order disclosure of such information. The third party may plead a „privacy“ defence. But such defence may, for good reasons, be overruled. In other words, after following the procedure outlined in Section 11(1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information.

24. Given the above procedure, it is not possible to agree with the submission of Mr. Bhushan that the word „or“ occurring in Section 11 (1) in the phrase information "which relates to or has been supplied by a third party" should be read as „and“. Clearly, information relating to a third party would also be third party information within the meaning of Section 11(1) of the RTI Act. Information provided by such third party would of course also be third party information. These two distinct categories of third party information have been recognized under Section 11(1) of the Act. It is not possible for this Court in the circumstances to read the word „or“ as „and“. The mere fact that inspection of such files was permitted, without following the mandatory procedure under Section 11(1) does not mean that, at the stage of furnishing copies of the documents inspected, the said procedure can be waived. In fact, the procedure should have been followed even prior to permitting inspection, but now the clock cannot be put back as far as that is concerned.

25. The logic of the Section 11(1) RTI Act is plain. Once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole world. There may be an officer who may not want the whole world to know why he or she was overlooked for promotion. The defence of privacy in such a case cannot be lightly brushed aside saying that since the officer is a public servant he or she cannot possibly fight shy of such disclosure. There may be yet another situation where the officer may have no qualms about such disclosure. And there may be a third category where the credentials of the officer appointed may be thought of as being in public interest to be disclosed. The importance of the post held may also be a factor that might weigh with the information officer. This exercise of weighing the competing interests can possibly be undertaken only after hearing all interested parties. Therefore the procedure under Section 11(1) RTI Act.

26. This Court, therefore, holds that the CIC was not justified in overruling the objection of the UOI on the basis of Section 11(1) of the RTI Act and directing the UOI and the DoPT to provide copies of the documents as sought by Mr. Kejriwal. Whatever may have been the past practice when disclosure was ordered of information contained in the files relating to appointment of officers and which information included their ACRs, grading, vigilance clearance etc., the mandatory procedure outlined under

Section 11(1) cannot be dispensed with. The short question framed by this Court in the first paragraph of this judgment was answered in the affirmative by the CIC. This Court reverses the CIC's impugned order and answers it in the negative.

27. The impugned order dated 12th June 2008 of the CIC and the consequential order dated 19th November 2008 of the CIC are hereby set aside. The appeals by Mr. Kejriwal will be restored to the file of the CIC for compliance with the procedure outlined under Section 11 (1) RTI Act limited to the information Mr. Kejriwal now seeks".

10. Therefore, except in cases involving overriding public interest, the ACR record of an officer cannot be disclosed to any person other than the officer himself/herself.

11. The decision relied upon by the petitioner in Centre for Earth Sciences Studies Vs. Anson Sebastian, 2010 (2) KLT 233, in my view, has no application in the facts of the present case. This case related to documents sought by the querist which were copies of documents furnished in a domestic inquiry against the employees of the appellant organization. Moreover, in the light of the decision in Arvind Kejriwal (supra), which is a decision of a co-ordinate bench of this Court, I am not inclined to follow the decision in Centre for Earth Sciences Studies (supra).

12. However, a perusal of the impugned order shows that the CIC has not examined the issue whether larger public interest justifies the disclosure of the information sought by the petitioner in this case. This issue should have been examined by the CIC.

13. Accordingly, the matter is remanded back to the CIC for considering the issue whether, in the larger public interest, the information sought by the petitioner could be disclosed. If the CIC comes to a conclusion that larger public interest justifies the disclosure

of the information sought by the petitioner, the CIC would follow the procedure prescribed in Section 11 of the Act.

14. The petition stands disposed of in the aforesaid terms.

(VIPIN SANGHI)

JUDGE

DECEMBER 08, 2011

'BSR'